IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL Nos. 5224 of 2001 & 5225 of 2001
with
Civil Application Nos. 12963 of 2001 & 12964 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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OIL & NATURALGASCORP.LTD - Appellant(s)

Versus

TALUKAPANCHAYAT,KHAMBHAT & 1 - Defendant(s)

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Appearance :
MR AJAY R MEHTA for Appellant(s) : 1,
MR RA MISHRA for Defendant(s) : 1,
MR. A.Y. KOGJE, AGP, for Defendant(s) : 2,
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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 1/12/2005

CAV JUDGMENT

(Per : HONOURABLE MR.JUSTICE K.M.MEHTA)

1. Oil and Natural Gas Corporation Ltd., appellant, Original Plaintiff, (hereinafter referred to as “the plaintiff”) has filed this appeal under Section 96 of the Code of Civil Procedure, 1908 (hereinafter referred to as “CPC” for short) against the judgement and decree dated 27.9.2001 passed by 7th Joint Civil Judge, Senior Division, Nadiad, in Special Civil Suit No. 81 of 1997. By the impugned judgement, the learned Judge was pleased to dismiss the suit of the plaintiff.

2. The facts giving rise to the present appeal are as under:

2.1 The appellant, plaintiff, is a Statutory Corporation incorporated under the provisions of the Companies Act, 1956 with effect from 1.2.1994. Initially the plaintiff was known as Oil and Natural Gas Commission, a statutory Corporation under the Oil and Natural Gas Commission Act. Even after 1.2.1994 the Union of India has a controlling shareholding in the plaintiff Corporation and it remains to be “State” within the meaning of Article 12 of the Constitution of India. Now the Plaintiff is working under the Ministry of Petroleum.

2.2 The plaintiff is engaged in exploration and extraction of mineral oil in the entire country. The plaintiff had, for the aforesaid purpose, obtained various lands in and around Khambhat. As the plaintiff desires to have some land for the said purpose, the State of Gujarat decided to give certain land on lease to the plaintiff. In view of the same the State Government has decided to grant certain lands of village Khambhat on lease to the plaintiff (hereinafter referred to as the "suit land") under the provisions of the Petrol and Natural Gas Rules enacted by the Central Government. It is the case of the plaintiff that as per Rule 13(2)(b) of the Petroleum and Natural Gas Rules, the plaintiff is liable to pay surface rent to the State Government and if a well starts producing mineral oil, the plaintiff is liable to pay royalty to the State Government.

2.3 It is the case of the plaintiff that the State Government has granted lease dated 17.7.1978 executed between the State of Gujarat and the plaintiff. The said lease was granted in favour of the plaintiff in pursuance of the right acquired, in accordance with the Petroleum and Natural Gas Rules, 1959 made under the Oil Fields

(Regulation and Development) Act, 1948. The plaintiff has applied for a Petroleum Mining Licence in respect of the land described in para 1 of the Schedule of the said Lease Deed.

2.4 The Lease Deed contains various sub-clauses but so far as we are concerned Part VII of the Lease Deed is relevant for our purpose for which the learned counsel hs relied upon. Part VII of the Lease Deed reads as under:

> "PART VII – THE COVENANTS OF THE LESSEE"
>
> "The lessee shall pay the rents and royalties reserved by this lease at the time and in the manner provided in Parts V and VI of this Schedule and shall also pay and discharge all taxes, rates, assessments and impositions whatsoever being in the nature of public demands which shall from time to time be charged, assessed or imposed by the authority of the Central or State Government upon or in respect of the premises and works of a like nature except demands for land revenue."

2.5 It is the case of the plaintiff that Section 45

of the Bombay Land Revenue Code provides that all land liable to pay revenue unless specifically exempted. The learned counsel submitted that in view of Part VI of the Lease Deed which has been quoted earlier, the plaintiff has no liability to pay land revenue.

2.6 It is also the case of the plaintiff that even otherwise as per Section 48 of the Bombay Land Revenue Code, 1879, which provides the manner of assessment and alteration of assessment, the plaintiff is not liable to pay land revenue since mining is specifically not included under sub-Section (1) of Section 48 of the Code.

2.6A It is the case of the plaintiff that in spite of the aforesaid position of law, the Taluka Development Officer, Kambhat, had issued notices under Section 148 of the Bombay Land Revenue Code which provides liabilities (incurred by default) and demanded Rs. 13,68,751/- from the plaintiff of land revenue for the period 1.8.1994 to 1.8.1995 plus notice fees. The said notice was issued on 13.2.1997. The plaintiff has further submitted that the Taluka Development Officer has addressed a registered letter to the plaintiff demanding land revenue for the year 1994-95, 1995-96, education cess and other tax in

all Rs. 13,68,751/-. Along with the said letter, notice was annexed.

2.7 The Taluka Development Officer has, thereafter, issued demand notice under Section 152 of the Code on 14.3.1997 and the Taluka Development Officer has addressed a letter dated 15.3.1997 along with the notice. The plaintiff thereafter through its advocate replied to the said notice on 29.3.1997 pointig out that in view of the provisions of the lease Deed, there is no liability on plaintiff to pay land revenue.

2.8 In view of the aforesaid position when the authority pressured for recovery of the dues, the plaintiff filed Suit being Civil Suit No. 81 of 1997 before the learned Civil Judge (S.D.), Nadiad, praying for a declaration that notices dated 13.2.1997 and 15.3.1997 asking for land revenue and educational cess and other taxes are unconstitutional and arbitrary. The said Suit was filed somewhere in June, 1997. It was also prayed that the Court may grant permanent injunction restraining the authority from levying such tax.

2.9 The defendant has filed written statement Exh. 8 on 22.9.1997. It was contended that the plaintiff has filed the Suit without issuing notice. Therefore, the Suit is not maintainable. The plaintiff's Suit is not maintainable as the plaintiff has not jointed the State Government as necessary party. It was further stated that earlier the plaintiff has filed Suit No. 20 of 1995 and in that Suit the Court had held that the plaintiff is liable to pay land revenue from 1.2.1994 and therefore the Suit is barred by res judicata. As per the provisions of the Gujarat Panchayats Act, 1993 and the Gujarat Education Cess Act, 1962 the plaintiff is liable to pay panchayat tax as well as education cess.

2.10 The defendant has relied on another agreement dated 25.2.1982 in which there is a liability to pay tax arrears on the plaintiff. The defendant has also relied on another Government Resolution which shows that the plaintiff is liable to pay the tax.

2.11 During the pendency of the suit the plaintiff has sought for an injunction against recovery of tax which had initially been granted by the trial Court vide

its order below Exh. 5 which was ultimately dismissed on 16.11.1998, against which the plaintiff (appellant) preferred Appeal from Order No. 607 of 1998 and also filed Civil Application No. 11741 of 1998 for stay before this Court. This Court had restrained the defendats from collecting the land revenue, education cess and village panchayat cess by order dated 15.12.1998. Thereafter, the aforesaid Appeal from Order was disposed of by this Court vide order dated 26.7.2000 wherein the interim relief granted has been continued till disposal of the Suit.

2.12 Before the trial Court, the plaintiff led documentary evidence and the defendant also led documentary evidence. The trial Court framed issue at Exh. 17 and thereafter the learned trial Judge was pleased to hold that the plaintiff failed to prove that the plaintiff Corporation is exempted from paying village education cess as contended in the plaint. The plaintiff is not entitled to get declaration / injunction as prayed for in the suit. The plaintiff is not entitled to any relief. The trial Court dismissed the suit but the trial Court continued interim relief till 27.12.2001.

2.13 Being aggrieved by and dissatisfied with the

aforesaid judgement and decree the original plaintiff-appellant herein has filed this First Appeal on 20.12.2001 before this Court. Along with the said appeal, the plaintiff also filed Civil Application No. 12963 of 2001 for stay of recovery of land revenue, education cess and village panchayat cess as per the notices dated 13.2.1997 and 15.3.1997. In the said Civil Application, the defendants have filed reply and ultimately this Court by order dated 20.3.2002 was pleased to pass the following order:

> "Heard the learned counsel for the respective parties. For the present it is directed that the parties shall file, within two weeks from today, a common statement of the demand made by the respondent under three different heads viz., Panchayat Cess, N.A. Assessment and Education Cess for the relevant years covered by the two suits in question. Further orders shall be passed later on.
>
> S.O. To 4th April 2002. Ad interim relief is extended till then."

The said order has been continued from time to time.

2.14 At the time of hearing of this appeal Mr. Ajay R. Mehta, learned advocate for the appellant has invited our attention to the Lease Deed executed between the parties particularly clause VII which we have quoted earlier. The learned counsel has relied on Section 45 and Section 48 of the Bombay Land Revenue Code which is quoted as under:

> "Sec. 45 – All land liable to pay revenue unless specially exempted – (1) All land, whether applied to agricultural or other purposes, and wherever situate, is liable to the payment of land revenue to the Government according to the rules hereinafter enacted except such as may be wholly exempted under the provisions of any special contract with the Government or any law for the time being in force."

2.15 After relying on Section 45 of the Act, the learned counsel submitted that though the said Section provides that all land are liable to pay land revenue to the State Government unless specially exempted. Therefore, the State Government has power to exempt certain land from land revenue and in fact the said Section also provides that land revenue to be levied

except such as may be wholly exempted under the provisions of any special contract with the government or any other law for the time being in force. The learned counsel submitted that the basis of the assessment is according to the use of the land. Though the said Section provides that the Government has power to levy tax nonetheless the said Section also empowers for exemption. In this case the Government has entered into contract specifically exempting O.N.G.C.-plaintiff from paying land revenue. Once there is a specific contract entered into between the plaintiff and the State Government then by conjoint reading of Section 45 of the Code with the contract, the plaintiff is not liable to pay land revenue.

2.15A He has also relied on Section 48 of the Code which also reads as under:

> "Sec. 48 – Manner of assessment and alteration of assessment - (1) The land revenue leviable on any land under the provisions of this Act shall be assessed, or shall be deemed to have been assessed, as the case may be, with reference to the use of the land -

(a) for the purpose of agriculture;

(b) for the purpose of residence;

[c] for the purpose of industry;

(d)for the purpose of Commerce;

(e) for any other purpose”

2.16 The learned counsel after relying upon Section 48 of the Act, has stated that Section 48 provides the manner of assessment. It would depend upon the use of the land. The purpose of use of the land is agriculture, residence, industry, commerce or any other purpose. In this case the land is used for mining purpose and therefore under Section 48 of the Code the Government has no power to levy land revenue.

2.16A The learned has also relied on the order of the State Government dated 17.8.1989 which we have already referred.

2.17 As regards demand by respondent No. 1 for panchayat tax, he has referred to Panchayat Act 1993 particularly Section 191 of the Act which provides levy of fifty paise cess on every rupee of land revenue. Section 191 of the Act reads as follows:

"191 – Levy of fifty paise cess on every rupee of land revenue – (1) The State Government shall levy, on the conditions and in the manner hereinafter described, a cess at the rate of fifty paise on every rupee of -

[a] every sum payable to the State Governmnent as ordinary land revenue except sums payable on account of any of the charges mentioned in sub-section (2) and except sums payable on account of any charge which may be notified by the State Government in this behalf;

[b] every sum which would have been payable as land revenue by a small holder as defined in the Explanation to Section 45 of the Bombay Land Revenue Code, 1879, (Bom. V of 1879) in respect of the land held by him for the time being for the purpose of agriculture, had land revenue been payable in respect of such land under the said section by such small holder; and

[c] every sum which would have been assessable on any land as land revenue had there been no **alientation** of the land revenue.

Provided that no cess shall be levied under this Section on sums less than twenty five paise.

Provided further that the amount of cess shall, if not a multiple of five paise be increased to be next highest multiple of five paise.

[d] every sum which would have been payable as land revenue in respect of any land leased by the Government as if land revenue is leviable on such land, notwithstanding that no land revenue is leviable on such land under the terms of such lease.

2.18 The learned counsel has also relied on Part II – taxation by village panchayats – Section 200 levy of taxes and fees by village panchayats. He has also relied on Section 203 of the Act which provides levy and collection upto twenty five paise as cess on every rupee of land revenue.

2.19 The learned counsel has submitted that though panchayat has been empowered to levy fifty paise cess on every rupee of land revenue under Section 191, but on reading clauses [a] to [c] of Section 191(1) with Sec. 203 of the Act he submitted that in view village

panchayat will have no power to levy village panchayat tax under Section 191 of the Act.

2.20 The learned counsel has relied on definition of “alienation” of land revenue. He submitted that once the State has no power to levy, assess and collect land revenue then under Section 191 of the Act Taluka Panchayat will also have no power to levy tax under the provisions of the Panchayats Act, 1993. For that purpose he has relied on Sections 191 and 203 of the Panchayats Act.

2.21 In the said Suit which was filed before the learned Civil Judge (S.D.), Nadiad, it was contended that the land which are used for mining operations are concerned by the Mines and Minerals (Regulation and Development) Act, 1957 which is a Central Act which provides for conducting of mining operations, for collecting royalty and deed-rents etc and conditions for lease as per the Rules framed under the Act. The State Government, therefore, grants the petroleum exploration licence to the plaintiff which is signed by defendant No. 2 (i.e. Collector, Kheda). It was submitted that this licence is granted by the State Government with the approval of the Central Government. It was submitted that

the Central Government has made rules providing for fixation and collection of fees for prospecting licenses or mining leases, surface rent, security deposit, fines, other fees or charges and the time within which and the manner in which the dead rents or royalty shall be payable. It was stated that defendant No. 2 has signed/executed these documents on behalf of the State Government and therefore the same is binding on Taluka Panchayat, Khambhat.

3. Mr. Kogje, learned AGP, has tried to rely on the provisions of Section 45 and 48 of the Bombay Land Revenue Code and the contract entered into and stated that once there is a statutory provision the Government has power to levy tax under the Code. Mr. Mishra, learned advocate for the panchayat has relied on Sections 191 and 203 of the Act and contended that the panchayat has power to levy village panchayat tax.

3.1 Mr. R.A. Mishra, learned advocate, appears on behalf of defendant No. 1 Taluka Panchayat. He has supported the notice issued by the authority and also the reasoning of the learned trial Judge dismissing the suit.

4. We have gone through the record of the case and we

have also gone thorugh the arguments made by the learned counsel for the plaintiff and the defendants. In our considered view once the contract which has been entered into between the plaintiff and the Government which specifically states the Government not to levy “land revenue” then the village panchayat will have no power or jurisdiction to levy “land revenue” relying on Section 45 of the Act. The reliance placed by the learned AGP on Section 45 and Section 48 of the Land Revenue Code is unjustified and unwarranted because Section 45 itself provides power of exemption particularly special contract entered into between the plaintiff and the State Government. Here the State Government has specifically entered into contract with the plaintiff not to levy “land revenue” under the provisions of the Land Revenue Code. In view of Section 45 of the Land Revenue Code read with the contract, the State Government will have no power to levy tax under the Bombay Land Revenue Code.

4.1 In our view in view of Section 45 of the Code read with agreement it has been explicitly agreed that the plaintiff was not liable to pay land revenue. Once the plaintiff was not liable to pay land revenue, it was not liable to pay education cess assessable on the land revenue at the relevant time. In our view on the facts

and circumstances of the case, use of the land in mining purpose did not fall within any of the categories mentioned in sub-section (1) of Section 48 and hence there was no question of the plaintiff liable to pay tax otherwise being assessable to land revenue. In our view since the land in question were held on payment of flat rent/lease rent and were not liable to revenue assessment, there was no question of education cess being payable by the plaintiff. In our opinion, the trial Court has committed an error in not considering that no assessment can be levied and collected on the land used for mining operations unless provided in the lease deed itself. In our view, the trial Court has erred in coming to the conclusion that the plaintiff would be liable to pay tax merely because for earlier period of time, tax has been paid. In our view, the trial Court ought to have considered that the building in Kansari was not being used for mining purposes and as a matter of fact was being used as administrative office and hence the trial Court erred in concluding that the plaintiff would be liable to pay taxes merely because the appellant was paying tax for the property at Kansari. In our view the trial Court erred in holding that because tax was paid for Kansari property, the plaintiff would be liable for payment of tax even qua other properties.

4.2 Similarly under Section 191 read with Section 200 and 203 of the Panchayat the panchayat will also have no power to levy tax and therefore it will not be possible for the panchayat to levy tax under the provisions of the Panchayats Act.

4.3 As regards education cess, the learned counsel has relied on the provisions of the Act in support of his contention that in view of the provisions of the Gujarat Education Cess Act particularly Section 3 which provides that for the purpose of providing for the cost of promoting education in the State of Gujarat, there shall be levied and collected in accordance with the provisions of this Act an education cess which shall consist of -

(a) a surcharge on all lands except lands which are included within a village site and not assessed to land revenue;

(b) a tax on lands and buildings in urban areas.

4.4 Section 4 provides that the proceeds of the education cess and penalties (other than fines) recovered under this Act, shall first be credited to the

Consolidated Fund of the State and after deduction of the expenses of collection and recovery therefrom shall, under appropriation duly made by law in this behalf, be entered in, and transferred to, a separate fund called the State Education Cess Fund.

4.5 Section 5 provides levy of surcharge on agricultural lands and Section 7 provides surcharge in addition to non-agricultural assessment in respect of certain lands. It is no doubt true that earlier there was already judgement of Division Bench in the case of DIGVIJAYSINHJI SALT WORKS VS. STATE reported in 1970(11) GLR 249 which provides that if the land is exempt from land revenue then automatically no education cess is to be paid. In view of the same, the plaintiff may not have to pay education cess. However, after the said judgement Section 7 has been amended by Act No. 17/72 and inserted Section (1-A) in the main Section 7, and, in view of the said amendment in the Education Cess Act even if land revenue is not levied then too the plaintiff (holder of land) has to pay education cess.

4.6 We have considered various submissions made by the learned counsel. In our view the order of the learned trial judge rejecting the claim of the plaintiff is

wholly illegal and contrary to the provisions of the Bombay Land Revenue Code and the Panchayats Act. In our earlier part of this judgement we have considered the Bombay Land Revenue Code as well as other provisions of the Act. In our considered view the constract specifically entered into by the State Government exempts payment of land revenue. Therefore, the plaintiff will have no liability to pay land revenue under Section 45 of the Code.

4.7 In view of the above submission the defendants are not entitled to levy the tax as the plaintiff is not liable to pay any land revenue under the Bombay Land Revenue Code and in the light of Education Cess Act and the contract, the plaintiff is also not liable to pay panchayat cess in view of Section 191 read with Section 203 of the Act.

4.8 We have also considered Chapter XIII of Land Revenue Code which deals with restrictions on use of land. The lands occupied by the plaintiff are reserved for mining operations and are assigned for public purpose as the lands acquired by the plaintiff shall be deemed to be needed for a public purpose. Rule 75(1)(b) of the Land

Revenue Rules contemplates that the lands assigned for public purpose are not assessed and hence defendant No. 1 is not authorised to assess and claim non-agricultural assessment from the plaintiff in respect of the lands used for public purposes.

4.9 In view of the above, the appeal is allowed. The judgement and decree of the trial Court dated 27.9.2001 passed by the Joint Civil Judge (S.D.), Nadiad in Special Civil Suit No. 20 of 1995 is quashed and set aside. The original suit of the plaintiff is decreed partly and this Court holds that notices dated 13.2.1997 and 15.3.1997 issued by the Taluka Development Officer to pay tax in form of land revenue,and V.P. Cess are illegal and inoperative, unconstitutional and arbitrary and liable to be quashed and set aside. This Court grants permanent injunction restraining the defendants or their subordiates from collecting any tax in the form of Land Revenue and V.P. Cess, from the plaintiff.

4.10 So far as Education cess is concerned, in view of the above discussions and the legal position, plaintiff's suit against recovery of education cess is dismissed. Parties to bear their own costs throughout. A decree be framed accordingly.

(R.S. GARG, J)

(K.M. MEHTA, J)

(pkn)